



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/173945

PRELIMINARY RECITALS

Pursuant to a petition filed April 26, 2016, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance (MA), a telephonic hearing was held on May 19, 2016, from Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied petitioner’s prior authorization (PA) request for Evekeo.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] |
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By written submittal of: [REDACTED] R.Ph.
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She is diagnosed with ADHD.

2. On April 8, 2016 the petitioner's pharmacy submitted a PA request for petitioner to receive Evekeo. See Exhibit 1.
3. On April 18, 2016 the agency returned the PA to the pharmacy with a message detailing the approval criteria for amphetamines.
4. On April 20, 2016 the pharmacy resubmitted the PA with some conflicting information from the original PA.
5. On April 21, 2016 the agency issued a notice to petitioner denying the PA because petitioner did not meet the clinical criteria for approval.

DISCUSSION

The agency may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat. §§49.46(2) and 49.47(6)(a), as implemented by Wis. Admin. Code ch. DHS 107. Some services and equipment are covered if a prior authorization request is submitted and approved in advance of receiving the service. Some services and equipment are never covered by the MA program. In this case petitioner is seeking PA approval for the drug Evekeo, a stimulant.

Effective October 1, 2004 the agency implemented a Preferred Drug List (PDL) program for Wisconsin Medicaid. Most drugs and drug classes included on the PDL are covered by MA, but certain drugs may have restrictions (e.g., diagnosis, quantity limitations, age limitations). Most preferred drugs do not require PA except in those designated classes identified on the PDL. See Wis. Adm. Code §DHS 107.10. Non-preferred drugs require PA.

Evekeo is a non-preferred drug in the Stimulants and Related Agents class of the PDL. As such, there are specific PA criteria that must be met for approval:

Clinical Criteria for Amphetamine Formulations

The clinical criteria for approval of a PA request for amphetamine formulations are that the member has experienced an unsatisfactory therapeutic response or a clinically significant adverse drug reaction with **at least two preferred drugs** from the stimulants and related agents drug class, and that one of these preferred drugs was Vyvanse®.

See *ForwardHealth Update*, No. 2015-61, available online at <https://www.forwardhealth.wi.gov/kw/pdf/2015-61.pdf>.

Additionally, Section HFS 107.02(2)(b) of the Wisconsin Administrative Code states that the agency may reject payment for a service if the services are determined to be medically unnecessary, inappropriate, in excess of accepted standards of reasonableness or less costly alternative services, or of excessive frequency or duration.

Petitioner's mother appeared at hearing and confirmed that petitioner had not experienced an unsatisfactory therapeutic response or a clinically significant adverse drug reaction with at least two *preferred drugs*. Accordingly, I must find that she does not meet the criteria and the denial was correct.

I add, assuming petitioner finds this unfair, that I lack the equitable powers to grant the relief sought. See Oneida County v. Converse, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). In other words, administrative law judges do not have the power to address issues of fairness. We are required to apply the law as written. As such, I must uphold the denial. If she trials another preferred drug and has an adverse reaction or response, she may always submit another PA.

CONCLUSIONS OF LAW

The petitioner is not eligible for payment by the MA program for Evekeo at this time.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of June, 2016

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 30, 2016.

Division of Health Care Access and Accountability